

# **EXHIBIT “21”**

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WINDSOR SECURITIES, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

WINDSOR SECURITIES, LLC,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE INSURANCE  
CO.; and DOES 1 through 100, inclusive,

Defendants,

CASE NO. BC488981  
Hon. Jane Johnson  
Dept: 308

**FIRST AMENDED COMPLAINT  
FOR:**

- 1. BREACH OF CONTRACT;**
- 2. BREACH OF COVENANT OF  
GOOD FAITH AND FAIR  
DEALING;**
- 3. UNFAIR BUSINESS PRACTICES;**
- 4. INJUNCTIVE RELIEF/SPECIFIC  
PERFORMANCE; AND**
- 5. DECLARATORY RELIEF.**

**DEMAND FOR JURY TRIAL**

**THE PARTIES**

1. Plaintiff Windsor Securities, LLC (“Windsor”) is a Nevada limited liability company with its principal place of business in Ardmore, Pennsylvania. Windsor is the owner of all legal and beneficial interests in the life insurance policy at issue.

2. Defendant The Lincoln National Life Insurance Company ("Lincoln") is, upon information and belief, an Indiana corporation with its principal place of business in Fort Wayne, Indiana. Lincoln issued the life insurance policy at issue.

3. Plaintiff is unaware of the true names and capacities of Does 1 through 100, inclusive, and therefore sues said Doe Defendants by their fictitious names pursuant to California Code of Civil Procedure Section 474. Plaintiff will amend this Complaint to allege the true names and capacities of the Doe Defendants when they are ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously named Doe Defendants is responsible for the occurrences alleged herein and in some manner proximately caused the damages suffered by Plaintiff.

4. Lincoln and Does 1 through 100 will be referred to collectively as "Defendants" herein.

5. At all times herein mentioned, unless otherwise indicated, Defendants were the agents and employees of each of the remaining Defendants, and were at all times acting within the purpose and scope of said agency and employment, and each Defendant has ratified and approved the acts of his agent.

#### **JURISDICTION AND VENUE**

6. This Court has personal jurisdiction over each of the Defendants because each Defendant has had purposeful contacts with California citizens and has done and/or is doing business in California in a manner that has caused and/or is causing injury to Plaintiff in California.

7. Venue in this judicial district is proper because each Defendant transacted business in this district, a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district, the contract was entered into in this district and Defendants committed overt acts in this district.

#### **GENERAL ALLEGATIONS**

8. This lawsuit concerns a life insurer's breach of contract, breach of the covenant of good faith and fair dealing, and unfair business practices. The lawsuit seeks injunctive relief for

1 specific performance of the policy, declaratory relief that the policy remains in full force and  
 2 effect, compensatory and punitive damages, restitution, attorney's fees and costs in compensation  
 3 for the insurer's wrongful conduct, including the following:

- 4 (a) Canceling the Policy without providing any notice of cancellation;
- 5 (b) Failing to notify Windsor of the minimum amount due at least 30 days  
 6 before the end of the grace period;
- 7 (c) Failing to acknowledge or implement a request to change the agent for the  
 8 Policy to Joseph Darracq;
- 9 (d) Failing to notify the policy holder that no agent was acting as agent for the  
 10 Policy;
- 11 (e) Failing to appoint a new or substitute agent for the Policy after terminating  
 12 the agency contract of Andy Castro;
- 13 (f) Failing to notify Windsor that no agent was acting as agent for the Policy  
 14 after Windsor became owner of the Policy;
- 15 (g) Preventing servicing from Mr. Castro, Mr. Darracq or any agent by  
 16 terminating Mr. Castro as the agent for the Policy without taking any steps  
 17 to ensure that a new or substitute agent for the Policy was appointed;
- 18 (h) Failing to honor the "COVERAGE PROTECTION GUARANTEE  
 19 REINSTATEMENT PROVISIONS PERIOD" of the Policy, which applies  
 20 "WITHIN 90 DAYS AFTER THE DATE OF TERMINATION . . .;"
- 21 (i) Insisting upon a forfeiture for nonpayment on a day named without having  
 22 notified the policy holder that no agent was acting as agent for the Policy;
- 23 (j) Insisting upon a forfeiture for nonpayment on a day named without having  
 24 appointed a new or substitute agent for the Policy;
- 25 (k) Exercising dominion and control over the premium paid on the Policy in  
 26 bad faith without providing coverage as required and requiring Windsor to  
 27 initiate this action before returning the premium to Windsor; and
- 28 (l) Failing to reinstate the Policy despite a valid request for reinstatement.

1           9.       Plaintiff has suffered and continues to suffer irreparable injury and damages as a  
 2 result of acts jointly undertaken by Defendants, and each of them. Plaintiff avers that Lincoln  
 3 engaged in numerous other instances of bad faith conduct, including a deliberate pattern of delay  
 4 and misrepresentation despite the reasonable good faith effort of Plaintiff. This type of conduct  
 5 by Lincoln represents a pattern of conduct by Lincoln designed to unethically dispose of certain  
 6 types of policies and policy holders that Lincoln finds undesirable. Lincoln engaged in bad faith  
 7 conduct in order to attack Windsor and Steven Prusky, the Managing Member of Windsor, in  
 8 order to retaliate against them from the fact that they defeated Lincoln in prior disputes in which  
 9 Lincoln had engaged in improper conduct, including but not limited to an action entitled *Prusky*  
 10 *et al. v. Aetna Life Ins. & Annuity Co. et al.*, Case Nos. 04-4466/4547 (3d Cir.), which was  
 11 resolved favorably for Windsor and Mr. Prusky and unfavorably for Lincoln. Upon information  
 12 and belief, Lincoln engaged in a pattern of improper conduct against Windsor and Mr. Prusky  
 13 based on malice and animus against them.

14       ***The Life Insurance Policy***

15           10.       On or about May 13, 2008, Lincoln issued the life insurance policy at issue, Policy  
 16 No. JJ-7025419 ("Policy"). A true and correct copy of the Policy is attached hereto as Exhibit A.  
 17 Pursuant to the Policy, the insured was Martha G. Garcia ("Insured") and the owner was the  
 18 Martha G. Garcia Family Trust. The Policy provides life insurance coverage in the amount of  
 19 \$1,000,000. Lincoln's President and Secretary issued the Policy.

20           11.       Subsequent to Policy issuance, the Insured, the Martha G. Garcia Family Trust,  
 21 and Windsor entered in a certain financing agreement, and the Martha G. Garcia Family Trust  
 22 executed a certain collateral assignment of policy/certificate, assigning the Policy to Windsor as  
 23 collateral should the Martha G. Garcia Family Trust fail to repay Windsor its loans.

24           12.       On or about March 5, 2009, Lincoln allegedly sent a letter to the Martha G. Garcia  
 25 Family Trust stating, *inter alia*, that Lincoln would like to "notify" the Martha G. Garcia Family  
 26 Trust that Andy Castro, the agent for the Policy, "is no longer contracted with the Lincoln  
 27 Financial Group" but Windsor has no record that the Martha G. Garcia Family Trust ever  
 28

1 received this alleged letter. At no time did Lincoln notify the policy holder that no agent  
2 whatsoever was performing as agent for the Policy.

3 13. On or about July 28, 2009, Windsor recorded its security interest in the Policy and  
4 all proceeds therefrom with the Secretary of State of California by filing a UCC financing  
5 statement.

6 14. On or about February 12, 2010, Lincoln acknowledged recordation of the  
7 assignment to Windsor on Lincoln's books and records.

8 15. On or about March 31, 2010, the Insured and the Martha G. Garcia Family Trust  
9 agreed that Windsor shall retain the Policy as its own property as satisfaction for Windsor's loan,  
10 and appointed Steven G. Prusky, Managing Member of Windsor, as Trustee of the Martha G.  
11 Garcia Family Trust.

12 16. On or about May 7, 2010, Lincoln acknowledged recordation of the appointment  
13 of Steven G. Prusky, Managing Member of Windsor, as Trustee of the Martha G. Garcia Family  
14 Trust.

15 17. On or about June 21, 2010, Lincoln sent the Martha G. Garcia Family Trust  
16 purported information about the request to change ownership and beneficiary on the Policy.

17 18. In sending the Martha G. Garcia Family Trust purported information about the  
18 request to change ownership and beneficiary on the Policy, Lincoln intentionally omitted  
19 information about the agent for the Policy because there was, in fact, no agent for the Policy at  
20 that time. Specifically, on or about June 21, 2010, Ken Elder, a Vice President of Lincoln,  
21 intentionally caused Lincoln to omit information about the agent for the Policy by directing  
22 Lincoln personnel to omit from the information sent to Windsor the "agent disclosure form as the  
23 agent is terminated".

24 19. On or about July 21, 2010, Lincoln acknowledged recordation of the change of  
25 owner and beneficiary of the Policy. The owner was changed to Windsor Securities, LLC and the  
26 beneficiary was changed to Windsor Securities, LLC. Even after having acknowledged  
27 recordation of the change of owner and beneficiary of the Policy to Windsor, Lincoln  
28 intentionally omitted information about the agent for the Policy because there was, in fact, no

1 agent for the Policy at that time or at any time after Windsor became owner and beneficiary of  
2 record.

3 20. The Policy requires that Lincoln must “notify” the policy owner “and any assignee  
4 of the minimum amount due at least 30 days before the end of the grace period.” (Policy at p. 7).

5 21. The Policy provides that the “COVERAGE PROTECTION GUARANTEE  
6 REINSTATEMENT PROVISIONS PERIOD” applies “WITHIN 90 DAYS AFTER THE DATE  
7 OF TERMINATION AND PRIOR TO THE INSURED’S ATTAINED AGE 121.” (Policy at p.  
8 4D). *See* Cal. Ins. Code § 10160.

9 ***The Usual Practice Regarding Notices of the Amount Due***

10 22. As noted above, Lincoln was *required* to give Windsor notice of the minimum  
11 amount due “at least 30 days before the end of the grace period.” (Policy at p. 7). The usual  
12 practice – prior to the events of 2012 at issue in this lawsuit – was that Windsor received from  
13 Lincoln notices of the minimum amount due approximately 30 days before the end of the grace  
14 period. The usual practice – prior to the events of 2012 at issue in this lawsuit – was that Windsor  
15 then immediately paid the amount due.

16 ***Importance of an Agent Regarding Notices of the Amount Due***

17 23. Windsor was entitled to rely on its agent for the Policy, including relying on its  
18 agent to advise Windsor of the amount due prior to the end of the grace period.

19 24. Agents receive duplicate copies of all premium notices, among other  
20 correspondence, and a policy’s agent monitors the policy for pending lapses and other  
21 considerations. Agents are intended to assist policy owners in matters concerning the policy.

22 25. Mr. Castro was the agent on the Policy at the outset.

23 26. Windsor requested that Mr. Darracq be substituted as the agent for the Policy.

24 ***Improper Failure to Appoint New or Substitute Agent***

25 27. At no time prior to the cancellation of the Policy did Lincoln ever notify Windsor  
26 that Lincoln did not substitute Mr. Darracq as the agent for the Policy.

27 28. At no time prior to the cancellation of the Policy did Lincoln ever notify Windsor  
28 (or Windsor’s predecessor) that no agent whatsoever was serving as agent for the Policy.



1           29.     At no time ever did Lincoln appoint any new or substitute agent to replace Mr.  
2     Castro as the agent for the Policy.

3           30.     In other words, Lincoln, knowing that Windsor (or Windsor's predecessor) relied  
4     on the agent to perform his or her obligations, specifically including relying on the agent to advise  
5     Windsor (or Windsor's predecessor) of the amount due prior to the end of the grace period,  
6     terminated the agency contract of Mr. Castro but never notified Windsor (or Windsor's  
7     predecessor) that no agent whatsoever was serving as agent for the Policy. Since Windsor (or  
8     Windsor's predecessor) were never informed that no agent whatsoever was serving as agent for  
9     the Policy, Windsor (and Windsor's predecessor) had no knowledge that there was no agent  
10    whatsoever to service the Policy.

11          31.     At no time prior to the cancellation of the Policy did Lincoln ever notify Windsor  
12    (or Windsor's predecessor) of the reasons that Lincoln terminated the agency of Mr. Castro.  
13    Upon information and belief, Lincoln terminated Mr. Castro's appointment as agent based upon  
14    Lincoln's belief that Mr. Castro had engaged in fraudulent schemes, misrepresentations, and  
15    conspiracies with respect to life insurance policies not at issue in this action. Despite Lincoln's  
16    knowledge and belief as to Mr. Castro's alleged conduct, Lincoln never informed Windsor (or  
17    Windsor's predecessor) of these alleged facts.

18          32.     As an insurer, when Lincoln terminated the agency contract of Mr. Castro, Lincoln  
19    was under a *duty* to notify the policy holder of the termination. *See* Couch on Insurance 3d §  
20    44.70 ("*When the insurer terminates the agency contract*, it is its *duty* to *notify* third persons,  
21    such as *insureds* with whom the agent dealt, *and inform them of the termination.*" (emphasis  
22    added)).

23    ***Improper Failure to Notify Windsor of Amount Due Before End of Grace Period***

24          33.     At no time ever did Lincoln notify Windsor of the amount due before the end of a  
25    60-day grace period beginning on February 12, 2012. At no time ever did Lincoln notify  
26    Windsor of a pending lapse due to lack of premium "of the amount due before the end of a 60-day  
27    grace period beginning on February 12, 2012." (Policy at p. 7).



1           34. By failing to notify Windsor of the amount due before the end of a 60-day grace  
2 period beginning on February 12, 2012, Lincoln breached the Policy and left Windsor unable to  
3 make a timely payment of the amount due.

4           35. By letter dated June 5, 2012, almost two months after the alleged lapse, Lincoln  
5 alleged that Lincoln had sent Windsor a lapse pending notice dated March 8, 2012. However,  
6 Lincoln in fact never sent Windsor a lapse pending notice dated March 8, 2012, as evidenced by  
7 the fact that Windsor never received any such notice. Lincoln admitted that Lincoln was unable  
8 to provide any evidence whatsoever that Lincoln had, in fact, sent Windsor a lapse pending notice  
9 dated March 8, 2012.

10           36. Because Lincoln had terminated Mr. Castro as the agent without notifying  
11 Windsor (or Windsor's predecessor) that no agent was serving as agent for the Policy, failed to  
12 substitute Mr. Darracq as the agent without notifying Windsor, and failed to have any agent at all  
13 assigned to service the Policy without notifying Windsor, Windsor was unknowingly deprived of  
14 the assistance of an agent to service the Policy or advise Windsor to make premium payments  
15 when due.

16 ***Improper Cancellation of the Policy***

17           37. Prior to receiving any relevant correspondence from Lincoln about the Policy in  
18 2012, on or about April 18, 2012, less than one week after the alleged lapse of the Policy (which  
19 alleged lapse was unknown to Windsor at the time), Windsor called Lincoln. Lincoln verbally  
20 informed Windsor of Lincoln's position that the Policy had lapsed. Windsor offered to pay the  
21 amount due immediately. Lincoln advised Windsor to await receipt of information as to the  
22 amount due. Windsor in fact paid the amount due immediately upon being advised by Lincoln of  
23 the amount due. Payment was made by check dated April 24, 2012, in the amount of \$9,100.00.

24           38. Despite never having notified Windsor of the amount due at least 30 days before  
25 the end of the grace period or at any time before the end of the grace period, Lincoln improperly  
26 canceled the Policy effective April 12, 2012, as stated in a letter dated April 18, 2012, from  
27 Lincoln to Windsor, which letter was received by Windsor after Windsor had contacted Lincoln  
28 by telephone on April 18, 2012.

39. Because Lincoln never notified Windsor (or Windsor's predecessor) that no agent whatsoever was serving as agent for the Policy, Lincoln cannot insist upon a forfeiture for nonpayment on a day named. *See* Couch on Insurance 3d § 44.72 ("*If the insured has no notice of the revocation of the agency, or that the agent ceased to act, the company cannot insist upon a forfeiture for nonpayment on the day named . . .*" (emphasis added)).

40. Lincoln was required to notify Windsor (or Windsor's predecessor) of the appointment of a new or substitute agent so that the agent may perform obligations resting upon the agent, such as servicing the Policy and advising Windsor (or Windsor's predecessor) to make premium payments under the Policy. *See* Couch on Insurance 3d § 44.72 ("the insurer may also be required to *notify the insured of the appointment of a new or substitute agent* so that the insured may perform obligations resting upon him or her" (emphasis added)).

***Receipt and Retention by Lincoln of Full Amount Due***

41. By its April 18, 2012, letter, Lincoln stated its position that the Policy lapsed on April 12, 2012. Lincoln admitted that Windsor had "the right to apply for reinstatement of the policy" and that "[o]ne of the features of your policy is the Coverage Protection Guarantee." Lincoln instructed Windsor to complete a short reinstatement questionnaire and return it to Lincoln with a check in the amount of at least \$9,085.24 by May 18, 2012. As noted, Windsor had sent to Lincoln the full amount due to Lincoln by check dated April 24, 2012, in the amount of \$9,100.00.

42. Lincoln cashed the check, retained and exercised dominion and control over the full amount of premium, but Lincoln has failed and refused to provide coverage. Only after this lawsuit was filed did Lincoln return to Windsor the premium of \$9,100.00 paid by Windsor.

***Immediate Request for Reinstatement***

43. By letter dated April 20, 2012, Windsor duly requested that Lincoln rescind its determination that the Policy lapsed or reinstate the Policy in full.

44. In addition to paying the amount due, Windsor provided Lincoln with a duly-completed reinstatement questionnaire from Windsor and an additional reinstatement questionnaire by the Insured. The reinstatement questionnaire from Windsor correctly noted that

1 “as discussed on the Policy application”, a “yes” answer was correct for the question “Have you  
2 ever had or been told by a licensed medical professional to seek treatment because of [certain  
3 specified conditions]” because, at the time of the application, there was an indication that the  
4 Insured may be told to seek treatment; however, the reinstatement questionnaire from the Insured  
5 correctly answered “no” to this question, because the Insured was correct that the Insured was  
6 neither told she “had” any of the specified conditions nor did she “seek treatment” for any of the  
7 specified conditions. Lincoln well knew of the ambiguity posed by this question and the obvious  
8 explanation for the different answers caused by the passage of time.

9 *Improper Refusal of Reinstatement by Lincoln*

10 45. Lincoln failed and refused to reinstate the Policy despite the valid request for  
11 reinstatement by Windsor.

12 46. Lincoln seized on this nonexistent discrepancy with respect to the reinstatement  
13 questionnaires as a pretext and subterfuge to deny reinstatement of the Policy.

14 47. By letter dated May 16, 2012, Lincoln demanded that Windsor complete a more  
15 lengthy reinstatement or change application and provide a medical release (“HIPAA”) form,  
16 despite the fact that Lincoln already had a medical release form signed by the Insured.

17 48. Windsor completed all forms requested by Lincoln within the time deadlines  
18 imposed by Lincoln. Windsor renewed its request for reinstatement of the Policy by letters dated  
19 May 18, 21, 25, 30, and June 18, 2012. Windsor further renewed its request for reinstatement of  
20 the Policy by having its counsel write a letter dated June 22, 2012, to counsel for Lincoln.

21 49. Despite the good faith efforts of Windsor to correspond with Lincoln, complete all  
22 forms requested by Lincoln, and make all payments to Lincoln within the time periods demanded  
23 by Lincoln, Lincoln failed to provide timely and complete responses to Windsor. Lincoln’s  
24 inadequate and incomplete responses raise the issue as to whether Lincoln was simply  
25 incompetent in handling the communications and forms submitted by Windsor, or was  
26 intentionally failing and refusing to process the communications and forms in a timely and  
27 professional manner.

28

1           50. Lincoln denied reinstatement by letter dated July 10, 2012, from Diane Leonard, a  
2 Director of Lincoln.

3 *Admissions by Lincoln as to Additional Improper Conduct*

4           51. Prior to denying reinstatement, by letter dated June 5, 2012, Lincoln admitted that  
5 the "original agent is no longer with Lincoln" and that "Lincoln does not automatically notify the  
6 policy owner that the agent has been terminated . . . ."

7           52. By letter dated June 28, 2012, Lincoln contended that "Lincoln is not required to  
8 inform the policy owner when the agent is terminated."

9           53. Lincoln further admitted in the June 28, 2012, letter: "No agent was assigned to  
10 replace Mr. Castro."

11           54. Lincoln also admitted in the June 28, 2012, letter: "There is no active servicing  
12 agent assigned to this policy."

13           55. Thus, under Lincoln's admitted practice, in this specific instance and on at least  
14 some other occasions, Lincoln terminates an agent and then exposes the policy owner to  
15 unknowing deprivation of an agent for servicing the Policy and advising the policy owner to  
16 make premium payments – without informing the policy owner that no agent is servicing the  
17 policy and acting as agent for the policy.

18           56. Lincoln further admitted that "Lincoln does not always reassign a servicing agent  
19 to the policy." Accordingly, it is Lincoln's admitted practice, in this specific instance and on at  
20 least some other occasions, that Lincoln knowingly terminates an agent, leaving a policy without  
21 a servicing agent, and then takes no steps to ensure that a new or substitute agent is appointed to  
22 service the policy.

23           57. Lincoln also leaves the policy owner unable to obtain the assistance of an agent  
24 because Lincoln does not notify the policy owner that no agent is servicing the policy and acting  
25 as agent for the policy even after the policy holder requests that Lincoln appoint an agent, as  
26 Windsor requested that Lincoln appoint Mr. Darracq here.

27           58. These unlawful and unfair business practices – failing and refusing to perform its  
28 duty to notify a policy owner that no agent was acting as such for the policy, and failing and

1 refusing to appoint a new or substitute agent – are then left to continue for an indefinite period of  
2 time until, as in the present case, Lincoln then commits a further unlawful and unfair business  
3 practice by improperly insisting upon a forfeiture for nonpayment on the day named, despite  
4 never having informed the policy owner that no agent was acting as such for the policy, and no  
5 new or substitute agent was appointed for the policy.

6 59. Lincoln also admitted in its June 5, 2012 letter that it “believes it is the policy  
7 owner’s responsibility to monitor the policy and increase premiums if need be.” By letter dated  
8 June 28, 2012, Lincoln stated that the policy owner “should closely monitor the cash value to  
9 determine when or if it may become necessary to pay money into the policy to keep it from  
10 lapsing.” Therefore, Lincoln completely disclaimed the requirement in the Policy that *Lincoln*  
11 must “*notify*” the policy owner of the premium due date 30 days before the end of the grace  
12 period, and that *Lincoln* must provide to the policy owner a calculation “of the minimum amount  
13 due.” (Policy at p. 7 (emphasis added)).

14 60. Contrary to Lincoln’s present position as expressed in the June 5 and 28, 2012,  
15 letters, the Policy at issue in this lawsuit imposes requirements upon Lincoln that Lincoln has  
16 willfully ignored. Prior to the alleged lapse of the Policy, Lincoln never informed Windsor that  
17 Lincoln was taking the position – despite the Policy language providing to the contrary – that it  
18 was *Windsor’s* responsibility to notify itself of the timing of the grace period, and that it was  
19 *Windsor’s* responsibility to calculate “the minimum amount due.” (Policy at p. 7).

20 61. Thus, Lincoln admittedly conducted this unlawful and unfair business practice of  
21 turning on its head the requirements that *Lincoln* was responsible for notifying the policy owner  
22 of the timing of the grace period, and that *Lincoln* was responsible for calculating “the minimum  
23 amount due” (Policy at p. 7), by unilaterally and secretly requiring *Windsor* to somehow notify  
24 itself of the timing of the grace period, and forcing *Windsor* to calculate “the minimum amount  
25 due,” despite the express provisions of the Policy, which assigns those responsibilities to Lincoln,  
26 not Windsor. (Policy at p. 7).

27 62. Lincoln’s business practices and conduct described herein were intended by the  
28 President, Vice President, Secretary, and Director of Lincoln identified above to cause injury to

Windsor or were despicable conduct carried on by the President, Vice President, Secretary, and Director of Lincoln identified above with a willful and conscious disregard of Windsor's rights, and were intentional misrepresentations, negligent misrepresentations, deceit or concealment of material facts known to Lincoln with the intent to deprive Windsor of property, legal rights, or to otherwise cause injury, such as to constitute malice, oppression or fraud. Alternately, one or more officers, directors or managing agents of Lincoln, including, but not limited to, the President, Vice President, Secretary, and Director of Lincoln identified above, authorized or ratified the wrongful conduct described above with the intent to deprive Windsor of property, legal rights, or to otherwise cause injury, such as to constitute malice, oppression or fraud.

### **FIRST CAUSE OF ACTION**

#### **Breach of Contract**

#### **(Against Lincoln)**

63. Plaintiff hereby incorporates as though fully restated herein the foregoing paragraphs of this Complaint.

64. The Insured, the Martha G. Garcia Family Trust and Lincoln entered into the Policy.

65. The Insured and the Martha G. Garcia Family Trust assigned to Windsor all legal and beneficial interests in the Policy.

66. Lincoln acknowledged recordation of the assignment to Windsor on Lincoln's books and records.

67. Windsor fully performed its obligations under the Policy.

68. Lincoln has repeatedly and without justification breached its obligations under the Policy by, among other things:

- (a) Canceling the Policy without providing any notice of cancellation;
- (b) Failing to notify Windsor of the minimum amount due at least 30 days before the end of the grace period;
- (c) Failing to acknowledge or implement a request to change the agent for the Policy to Mr. Darracq;



- (d) Failing to notify the policy holder that no agent was acting as agent for the Policy;
- (e) Failing to appoint a new or substitute agent for the Policy after terminating the agency contract of Mr. Castro;
- (f) Failing to notify Windsor that no agent was acting as agent for the Policy after Windsor became owner of the Policy;
- (g) Preventing servicing from Mr. Castro, Mr. Darracq or any agent by terminating Mr. Castro as the agent for the Policy without taking any steps to ensure that a new or substitute agent for the Policy was appointed;
- (h) Failing to honor the "COVERAGE PROTECTION GUARANTEE REINSTATEMENT PROVISIONS PERIOD" of the Policy, which applies "WITHIN 90 DAYS AFTER THE DATE OF TERMINATION . . . ;"
- (i) Insisting upon a forfeiture for nonpayment on a day named without having notified the policy holder that no agent was acting as agent for the Policy;
- (j) Insisting upon a forfeiture for nonpayment on a day named without having appointed a new or substitute agent for the Policy;
- (k) Exercising dominion and control over the premium paid on the Policy in bad faith without providing coverage as required and requiring Windsor to initiate this action before returning the premium to Windsor; and
- (l) Failing to reinstate the Policy despite a valid request for reinstatement.

69. Windsor is informed and believes and thereon alleges that Lincoln has breached the contract by other acts or omissions of which Windsor is presently unaware. Windsor will amend this Complaint at such time as it discovers the other acts or omissions of Lincoln constituting further breach of contract.

70. As a direct, proximate, and foreseeable result of Lincoln's breaches of contract, Windsor suffered monetary loses in an amount to be proven at trial, but exceeding \$25,000, exclusive of past and future interest thereon.



9 SECOND CAUSE OF ACTION

73. Plaintiff hereby incorporates as though fully restated herein the foregoing paragraphs of this Complaint.

16           75.     The Insured and the Martha G. Garcia Family Trust assigned to Windsor all legal  
17     and beneficial interests in the Policy.

77. Lincoln has unreasonably, unfairly and in bad faith breached the covenant of good faith and fair dealing and interfered with Windsor's right to receive the coverage and benefits of the Policy by, among other things:

- 28

- (d) Failing to acknowledge or implement a request to change the agent for the Policy to Mr. Darracq;
- (e) Failing to notify the policy holder that no agent was acting as agent for the Policy;
- (f) Failing to appoint a new or substitute agent for the Policy after terminating the agency contract of Mr. Castro;
- (g) Preventing servicing from Mr. Castro, Mr. Darracq or any agent by terminating Mr. Castro as the agent for the Policy without taking any steps to ensure that a new or substitute agent for the Policy was appointed;
- (h) Failing to honor the "COVERAGE PROTECTION GUARANTEE REINSTATEMENT PROVISIONS PERIOD" of the Policy, which applies "WITHIN 90 DAYS AFTER THE DATE OF TERMINATION . . .;"
- (i) Insisting upon a forfeiture for nonpayment on a day named without having notified the policy holder that no agent was acting as agent for the Policy;
- (j) Insisting upon a forfeiture for nonpayment on a day named without having appointed a new or substitute agent for the Policy; and
- (k) Failing to reinstate the Policy despite a valid request for reinstatement.

78. Windsor is informed and believes and thereon alleges that Lincoln has breached its duties of good faith and fair dealing owed to Windsor by other acts or omissions of which Windsor is presently unaware. Windsor will amend this Complaint at such time as it discovers the other acts or omissions of Lincoln constituting further breach of the covenant of good faith and fair dealing.

79. As a direct, proximate, and foreseeable result of aforementioned wrongful conduct of Lincoln, Windsor has suffered, and will continue to suffer in the future, monetary losses in an amount to be proven at trial, but exceeding \$25,000, exclusive of past and future interest thereon.

80. As a further direct, proximate, and foreseeable result of aforementioned wrongful conduct of Lincoln, Windsor has suffered, and will continue to suffer in the future, consequential

1 damages and other incidental damages and out-of-pocket expenses, all to Windsor's general  
2 damages in a sum to be determined at the time of trial.

3 81. As a further direct, proximate, and foreseeable result of aforementioned wrongful  
4 business practices and conduct of Lincoln, Windsor was compelled to retain legal counsel to  
5 obtain the benefits and coverage due under the Policy. Therefore, Lincoln is liable to Windsor for  
6 those attorney's fees incurred by Windsor in order to obtain the benefits under the Policy in a sum  
7 to be determined at the time of trial.

8 82. Lincoln's business practices and conduct described herein were intended by  
9 Lincoln to cause injury to Windsor or were despicable conduct carried on by Lincoln with a  
10 willful and conscious disregard of Windsor's rights, and were intentional misrepresentations,  
11 negligent misrepresentations, deceit or concealment of material facts known to Lincoln with the  
12 intent to deprive Windsor of property, legal rights, or to otherwise cause injury, such as to  
13 constitute malice, oppression or fraud under California Civil Code Section 3294, thereby entitling  
14 Windsor to punitive damages in an amount appropriate to punish or set an example of Lincoln.

### 15 **THIRD CAUSE OF ACTION**

#### 16 **Unfair Business Practices**

#### 17 **(Against Lincoln)**

18 83. Plaintiff hereby incorporates as though fully restated herein the foregoing  
19 paragraphs of this Complaint.

20 84. Lincoln has engaged in unfair competition and unfair business practices in  
21 violation of California Business and Professions Code Sections 17200 *et seq.* by engaging in  
22 activities that are unlawful, unfair, and fraudulent, including but not limited to all of the conduct  
23 alleged herein.

24 85. Lincoln's actions were undertaken with the purpose of harming Windsor in  
25 retaliation for the fact that the Policy was lawfully acquired by Windsor – Lincoln opposes the  
26 purchase and sale of policies on the secondary market and any financing that may have been  
27 obtained by persons or entities purchasing life insurance.

5            87. Windsor is therefore entitled to restitution of all monies obtained by Lincoln as a  
6 result of these unlawful, unfair and fraudulent business practices and preliminary and permanent  
7 injunctive relief against Lincoln to prevent any further acts of unfair business practices against  
8 Windsor.

9           88. Windsor is therefore further entitled to an award of attorney's fees pursuant to law,  
10 including but not limited to California Code of Civil Procedure Section 1021.5.

### **Injunctive Relief/Specific Performance**

14            89. Plaintiff hereby incorporates as though fully restated herein the foregoing  
15 paragraphs of this Complaint.

16           90.     Lincoln has engaged in breach of contract, breach of the covenant of good faith  
17 and fair dealing, and unfair business practices. As a result of Lincoln's conduct, Windsor is  
18 currently left without the coverage on the Policy for which Windsor paid. Money damages alone  
19 are inadequate to compensate Windsor for the harm, because Windsor has suffered and continues  
20 to suffer immediate and irreparable injury due to inadequacy of legal remedies because Windsor  
21 is currently left without coverage on the Policy.

91. Windsor is therefore entitled to preliminary and permanent injunctive relief, specific performance and other equitable relief to enforce the provisions of the Policy to keep the Policy in full force and effect, or, alternatively, to enforce the provisions of the Policy to reinstate it to full force and effect.

**FIFTH CAUSE OF ACTION**

**Declaratory Relief**

**(Against Lincoln)**

92. Plaintiff hereby incorporates as though fully restated herein the foregoing paragraphs of this Complaint.

93. An actual controversy has arisen and now exists between Windsor and Lincoln, including but not limited to the following:

- (a) Windsor contends that the Policy remains in full force and effect. Lincoln contends that the Policy has terminated.
- (b) Windsor contends that Lincoln must process the change of agent to Mr. Darracq. Lincoln contends that is permitted to refuse to allow Mr. Darracq to serve as the agent for the Policy.
- (c) Windsor contends that Windsor is entitled to have an agent for the Policy. Lincoln contends that, "Lincoln does not always reassign a servicing agent to the policy," and thus Windsor is not entitled to have an agent for the Policy.
- (d) Windsor contends that it is entitled to be notified when Lincoln terminates the agent for the Policy. Lincoln contends that, "Lincoln is not required to inform the policy owner when the agent is terminated" and that, "Lincoln does not automatically notify the policy owner then the agent has been terminated," and thus Windsor is not entitled to be notified if Lincoln terminates the agent for the Policy.
- (e) Windsor contends that it is entitled to be notified when the agent ceases to perform as agent for the Policy, and that Lincoln breached the Policy when Lincoln terminated Mr. Castro as agent for the Policy but failed to notify the policy holder that no agent was performing as agent for the Policy. Lincoln contends that, "Lincoln is not required to inform the policy owner when the agent is terminated" and that, "Lincoln does not automatically

1 notify the policy owner then the agent has been terminated,” and thus  
 2 Windsor is not entitled to be notified if the agent ceases to perform as agent  
 3 for the Policy, and that Lincoln did not breach the Policy when Lincoln  
 4 terminated Mr. Castro as agent for the Policy but failed to notify the policy  
 5 holder that no agent was performing as agent for the Policy.

6 (f) Windsor contends that Lincoln must notify Windsor “of the minimum  
 7 amount due at least 30 days before the end of the grace period.” Lincoln  
 8 contends that “it is the policy owner’s responsibility to monitor the policy.”

9 (g) Windsor contends that Lincoln must provide to Windsor a calculation “of  
 10 the minimum amount due.” Lincoln contends that “it is the policy owner’s  
 11 responsibility to monitor the policy and increase premiums if need be.”

12 (h) Windsor contends that Lincoln was required to reinstate the Policy.

13 Lincoln contends that Lincoln was not required to reinstate the Policy.

14 94. Windsor seeks a judicial declaration as to these issues:

15 (a) Whether Windsor, as a policy owner, is entitled to be notified by Lincoln if  
 16 no agent is acting as agent for the Policy;

17 (b) Whether Windsor, as a policy owner, is entitled to the servicing of an  
 18 agent, including but not limited to receiving communications from the  
 19 agent with respect to the Policy;

20 (c) Whether Lincoln may properly fail to appoint a new or substitute agent  
 21 when Lincoln terminates the agent for the Policy;

22 (d) Whether Lincoln may properly fail to appoint an agent for a Policy upon  
 23 the request of Windsor, the policy owner;

24 (e) Whether Lincoln may insist upon a forfeiture for nonpayment on the day  
 25 named, after having terminated an agent for the Policy without notifying  
 26 the policy owner that there was no agent acting as agent for the Policy; and  
 27  
 28



(f) Whether Lincoln may insist upon a forfeiture for nonpayment on the day named, after having terminated an agent for the Policy without appointing a new or substitute agent.

95. Windsor therefore seeks a judicial declaration of its rights under the Policy, including but not limited to a judicial declaration that the Policy is, and at all relevant times was, in full force and effect, or, alternatively, that the Policy is reinstated and is in full force and effect.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants for the following relief:

- (a) Actual and consequential damages caused by Defendants' wrongful conduct in an amount to be proven at trial, but exceeding \$25,000, exclusive of past and future interest thereon;
- (b) Restitution;
- (c) Punitive damages for Defendants' breaches of their fiduciary duties and other wrongful conduct described herein;
- (d) For preliminary and permanent injunctive, specific performance and other equitable relief against Lincoln to enforce the provisions of the Policy to keep the Policy in full force and effect, or, alternatively, to enforce the provisions of the Policy to reinstate the Policy to full force and effect;
- (e) An order compelling Lincoln to take all action necessary to restore the Policy in full force and effect, or, alternatively, to reinstate the Policy to full force and effect;
- (f) A judicial declaration that the Policy is, and at all relevant times was, in full force and effect, or, alternatively, that the Policy is reinstated and is in full force and effect;
- (g) Pre- and post-judgment interest on damages;
- (h) Attorney's fees and costs of court as applicable by law; and
- (i) Such further relief as the Court deems just and appropriate.



1 Dated: April 23, 2013

ARENTE FOX LLP

2  
3 By: 

4 MICHAEL S. CRYAN  
5 Attorneys for Plaintiff  
6 WINDSOR SECURITIES, LLC  
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Dated: April 23, 2013

ARENT FOX LLP

By: 

MICHAEL S. CRYAN  
Attorneys for Plaintiff  
WINDSOR SECURITIES, LLC